SUPREME COURT OF THE UNITED STATES.

No. 372.—October Term, 1926.

R. B. Morris, Doing Business as Morris & Lowther; H. M. Hewitt and Lew Nunamaker, etc., et al., Appellants, *vs.* Wm. Duby, H. B. Van Duzer, and W. H. Malone, etc. } Appeal from the District Court of the United States for the District of Oregon.

[April 18, 1927.]

Mr. Chief Justice Taft delivered the opinion of the Court.

The plaintiffs below, the appellants here, owned and operated for hire, under proper license, motor trucks on the Columbia River Highway in Oregon, from the east boundary of Multnomah County to the west limits of the city of Hood River, a distance of 22.11 miles. This Highway extends from Portland to The Dalles, Oregon, and is a rural post road. The plaintiffs have complied with all the state rules and regulations respecting the operation of motor trucks upon the Highway, and under previous regulations carried a combined maximum load of not exceeding 22,000 pounds. The Highway Commission under a law of Oregon has reduced the maximum to 16,500 pounds by an order, in which the Commission recites that the road is being damaged by heavier loads. The plaintiffs filed this bill to enjoin the enforcement of the order, on the ground that it invades their Federal constitutional rights.

The case was heard under section 166 of the Judicial Code as amended by the Act of February 13, 1924, c. 229, 43 Stat. 926, before a court of three judges on an order to show cause why a preliminary injunction should not issue restraining the Commission from enforcing the order. A motion to dismiss was interposed to the complaint by the defendant and submitted at the same time. The District Court denied the application for a preliminary injunction, and granted the motion to dismiss the plaintiff's amended

bill, on the ground that it did not state facts sufficient to constitute a cause of action or to entitle the plaintiffs to the relief demanded. As the plaintiffs refused to plead further, the cause was dismissed, and the case comes here directly from the District Court by virtue of paragraph 3 of section 238 of the Judicial Code as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936.

The Secretary of Agriculture, by virtue of three Acts of Congress, one of July 11, 1916, c. 241, 39 Stat. 355, an amendment thereto of February 28, 1919, c. 69, 40 Stat. 1189, 1200, and the Federal Highway Act of November 9, 1921, c. 119, 42 Stat. 212, is authorized to cooperate with the States, through their respective highway departments, in the construction of rural post roads. These require that no money appropriated under their provisions shall be expended in any State until it shall by its legislature have assented to the provisions of the Acts. They provide that the Secretary of Agriculture and the State Highway Department of each State shall agree upon the roads to be constructed therein and the character and method of their construction. The construction work in each State is to be done in accordance with its laws, and under the supervision of the State highway department, subject to the inspection and approval of the Secretary and in accord with his rules and regulations made pursuant to the Federal Acts. The States are required to maintain the roads so constructed according to their laws. In case of failure of a State to maintain any highway within its boundaries after construction or reconstruction, the Secretary is authorized to proceed on notice to have the highway placed in proper condition of maintenance, at the charge and cost of the federal funds allotted to the State, and henceforth to refuse any further project in such State until the State shall reimburse the Government for such maintenance and shall pay into the Federal Highway Fund for reapportionment among all the States the sum thus expended.

By section 5, chapter 237, of the General Laws of Oregon for 1917, the Oregon Highway Law was passed. That creates a highway commission with authority to carry out the provisions of the Act and to exercise general supervision over all matters pertaining to the construction of state highways and to determine the general policy of the highway department. By section 5, the Oregon Legislature assents to the provisions of the Act of Congress of 1916,

shing aid in the construction of rural post roads, and the De-
ient is authorized to enter into all contracts and agreements
the National Government relating to the survey, construction,
vement and maintenance of the roads under the Act of Con-
and to submit any scheme of construction as may be required
e Secretary of Agriculture, and to do all things necessary to
out the cooperation contemplated by the Act. The good faith
e State is pledged to make the available funds sufficient to
the funds apportioned to the State by the Government, and
aintain the roads constructed or improved with the aid of
so appropriated and to make adequate provision for carry-
ut such maintenance. By the General Laws of Oregon, 1917,
n 28, c. 194, p. 256, 268, in force when the first Federal
was passed, it was provided that no motor truck of over
s capacity should be driven or operated on any road or
ay of the State except with the consent and upon a permit
l by the county court of the county wherein such truck was
t to be driven or operated, and this was the provision of law
ce when the law was passed accepting the Federal Acts for
on. By the General Laws of Oregon of 1921, c. 371, sec.
t was provided that the Highway Commission and the
y court might grant special permits to permit any vehicle
g with its load a combined weight in excess of 22,000 pounds,
ve on the highways, the permission to be written and to in-
such terms, rules and stipulations as the Commission or court
t deem proper. By section 36 of the same Act, whenever in
udgment of the State Highway Commission or any county
or board of county commissioners of any county it would
r the best interests of the State or county and for the pro-
n from undue damage of any highway or highways or any
ns thereof, to reduce the maximum weights and speeds in
Act provided for vehicles moving over or upon the highways
e State, and to fix the reduced weights and speeds and pro-
the use of such highways for any other weights, authority is
such Commission or Board to do so and to post a notice of
imitation.

e order complained of, set forth as an exhibit to the amended
f complaint, recites that the Commission, as a result of due
tigation, finds that the road is being damaged and injured

on account of the kind and character of traffic now being hauled over it, and that the loads of maximum weight moved at the maximum speed are breaking up, damaging and deteriorating the road, and that it will therefore be for the best interests of the state highway that the maximum weight be reduced from 20,000 to 16,500, and that changes be made with respect to tires and their width.

The amended bill gives a history of the highway and its continued use for a weight of 22,000 pounds for four years, which has been availed of by the appellants as common carriers and as members of an Auto Freight Transportation Association of Oregon and Washington, with costly terminals in Portland established by requirement of that city; that the 22 miles in length of the Columbia River Highway here involved is a part of the interstate highway from Astoria, Oregon, into the State of Washington and all subject to the Federal Highway Acts, and that this order will interfere with interstate commerce thereon. The amended bill denies the damage to the road as found by the Highway Commission, and says that the reduction of the limit will be unreasonable, arbitrary and discriminatory. It avers that the plaintiffs have been engaged in active competition with steam railroads paralleling the Columbia River Highway and charging rates of traffic which unless the appellants can use trucks combined with loads of 22,000 pounds will prevent their doing business except at a loss. It alleges that the Acts of Congress and of Oregon constitute a contract by which the permission for the use of a five-ton combined weight of truck and load is a term which can not be departed from by the State Highway Commission, and constitutes a protection to the plaintiffs of which they may avail themselves in this action.

An examination of the acts of Congress discloses no provision, express or implied, by which there is withheld from the State its ordinary police power to conserve the highways in the interest of the public and to prescribe such reasonable regulations for their use as may be wise to prevent injury and damage to them. In the absence of national legislation especially covering the subject of interstate commerce, the State may rightly prescribe uniform regulations adapted to promote safety upon its highways and the conservation of their use applicable alike to vehicles moving in interstate commerce and those of its own citizens. *Hendrick* v. *Maryland*, 235 U. S. 610, 622, *et seq.*; *Kane* v. *New Jersey*, 242 U. S.

0, 167. Of course the State may not discriminate against inter-
ate commerce. *Buck* v. *Kuykendall*, 267 U. S. 307. But there is
sufficient averment of such discrimination in the bill. In the
uykendall case this Court said, p. 315:

"With the increase in number and size of the vehicles used upon highway, both the danger and the wear and tear grow. To exude unnecessary vehicles—particularly the large ones commonly ed by carriers for hire—promotes both safety and economy. tate regulation of that character is valid even as applied to interate commerce, in the absence of legislation by Congress which eals specifically with the subject. Vandalia R. R. Co. *v.* Public ervice Commission, 242 U. S. 255; Missouri Pacific Ry. Co. *v.* arabee Flour Mills Co., 211 U. S. 612. Neither the recent fedral highway acts, nor the earlier post road acts, Rev. Stat., par. 964; Act of March 1st, 1884, c. 9, 23 Stat. 3, do that."

The mere fact that a truck company may not make a profit unless can use a truck with load weighing 22,000 or more pounds does ot show that a regulation forbidding it is either discriminatory or unreasonable. That it prevents competition with freight affic on parallel steam railroads may possibly be a circumstance o be considered in determining the reasonableness of such a limitaion, though that is doubtful, but it is necessarily outweighed when appears by decision of competent authority that such weight is injurious to the highway for the use of the general public and unuly increases the cost of maintenance and repair. In the absence f any averments of specific facts to show fraud or abuse of discretion, we must accept the judgment of the Highway Commission pon this question which is committed to their decision as against nerely general averments denying their official finding.

Nor is there anything either in the Federal or State legislation o support the argument that the agreement between the National nd State government requires that the weight of truck and load vhich was permitted by the State when the agreement was made inds the State contractually to continue such permission. Conerving limitation is something that must rest with the road supervising authorities of the State not only on the general constitutional listinction between National and State powers but also for the additional reason having regard to the argument based on a conract that under the convention between the United States and the State in respect to these jointly aided roads, the maintenance after

construction is primarily imposed on the State. Regulation as to the method of use therefore necessarily remains with the State and can not be interfered with unless the regulation is so arbitrary and unreasonable as to defeat the useful purposes for which Congress has made its large contribution to bettering the highway systems of the Union and to facilitating the carrying of the mails over them. There is no averment of the bill or any showing by affidavit making out such a case.

The temporary injunction was rightly refused and the motion to dismiss the bill was properly granted.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.